



IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

OFFICE OF THE ATTORNEY)	
GENERAL,)	
ALABAMA DEPARTMENT OF)	
ENVIRONMENTAL MANAGEMENT,)	
Plaintiffs,)	
)	
V.)	Case No.: CV-2020-900594.00
)	
CITY OF FAIRHOPE,)	
Defendant.)	

Order on Settlement Agreement

I. INTRODUCTION

A. On May 15, 2020, the Plaintiffs filed Civil Action Number CV-2020-900594 in the Circuit Court of Baldwin County alleging that the Defendant was and remains in violation of its National Pollutant Discharge Elimination System (“NPDES”) Permit Number AL0020842 (“the Permit”). The complaint further alleged that the Defendant was in violation of the Alabama Water Pollution Control Act (“AWCPA”) set forth in Ala. Code § 22-22-1, et seq., as amended, and sought to enforce the terms of the Defendant’s NPDES Permit, applicable State and Federal law, and applicable ADEM regulations.

B. The Plaintiffs and the Defendant (“Parties”) have consented to the entry of this Order on Settlement Agreement (“Settlement Agreement”) without further adjudication of any of the factual or legal issues raised by the complaint herein.

C. NOW THEREFORE, without further adjudication of any issue of fact or law pertaining to this action, and upon the consent and agreement of the Parties to this

Settlement Agreement, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

II. JURISDICTION

This Court has jurisdiction over the subject matter herein and the Parties to this action pursuant to Ala. Code § 22-22A-5, as amended, as the Complaint states claims for injunctive relief and civil penalties upon which relief may be granted against the Defendant. Authority to bring this suit is vested in the Attorney General and the Alabama Department of Environmental Management pursuant to Ala. Code § 22-22A-5, as amended.

III. VENUE

Venue is proper in the Circuit Court of Baldwin County, Alabama because it is the judicial district in which the Defendant's wastewater treatment plant ("WWTP") is located, and in which the alleged violations occurred.

IV. PARTIES

A. The Attorney General is authorized by Ala. Code § 22-22A-5(1), § 22-22-9(m), § 22-22A-5(12), and § 22-22A-5(18), as amended, to enforce the provisions of the Alabama Water Pollution Control Act ("AWPCA"), which is found at Ala. Code §§ 22-22-1 through 22-22-14, as amended. Specifically, Ala. Code § 22-22A-5(18)b., as amended, authorizes the Attorney General to bring a civil action for violation of permits issued under the AWPCA and for unpermitted discharges of pollutants in violation of the AWPCA. In addition, Ala. Code § 22-22A-5(18)c., as amended, authorizes the Attorney General to recover civil penalties for such permit violations and unpermitted discharges of pollutants, providing for a maximum of \$25,000.00 per violation. The Attorney

General is authorized by Ala. Code § 36-15-12, as amended, to institute and prosecute, in the name of the State, all civil actions and other proceedings necessary to protect the rights and interests of the State.

B. The Alabama Department of Environmental Management (“the Department” or “ADEM”) is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-17, as amended. Pursuant to Ala. Code § 22-22A-4(n), as amended, the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

C. The City of Fairhope (“the Defendant”) is a municipal corporation in the State of Alabama, formed under the laws of the State of Alabama, and is a “person” within the meaning of Section 22-22-1(b)(7) of the AWPCA. The Defendant operates a wastewater treatment facility known as the Fairhope WWTP (“the Facility”). The Permittee discharges pollutants and stormwater from the Facility located at 300 North Church Street, in Fairhope, Alabama, into Mobile Bay and Big Mouth Gully, respectively, both waters of the State.

V. EFFLUENT LIMITATIONS

Nothing in this Settlement Agreement shall relieve the Defendant of its obligation to comply at all times with all effluent limitations in its NPDES Permit, including any modifications, extensions, or reissuances.

VI. BINDING EFFECT

The provisions of this Settlement Agreement shall apply to, and be binding upon,

the Defendant, its successors, and assigns, and upon the State of Alabama and its representatives, and ADEM and its representatives.

VII. OBJECTIVES

It is the express purpose of the Parties entering into this Settlement Agreement to further the objectives set forth in Section 22-22-2 of the AWPCA, and to resolve certain issues alleged by the State and ADEM in the Complaint as well as violations similar in nature that have continued to occur since the time of the filing of the Complaint. In light of these objectives, the Defendant agrees to implement the remedial actions as set forth herein and in accordance with schedules agreed to by the Parties and approved by the Court. The Defendant agrees to take all appropriate steps necessary to correct NPDES permit violations and to prevent unpermitted discharges of untreated or partially-treated wastewater. In addition, Defendant agrees to comply with the terms and conditions of its NPDES Permit and to submit to ADEM all NPDES reports in a timely manner and do all lawful acts necessary to effectuate the provisions of this Settlement Agreement.

VIII. REMEDIAL ACTIONS

A. The Defendant shall prepare and submit to the Department an Engineering Report that addresses the need for changes in maintenance and operating procedures, the potential for infiltration and inflow, the need for modification of existing treatment and collection system works, and the need for new or additional treatment and collection system works as necessary to achieve compliance with applicable rules and regulations and Permit conditions. The Engineering Report shall include a Compliance Plan with a schedule for implementation of necessary corrective actions and cost of

such necessary corrective actions, if known. The Engineering Report shall include a plan for continued maintenance and assessment of the collection system to minimize future inflow and infiltration. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. The Engineering Report shall be submitted so that it is received by the Department no later than 120 days after entry of this Settlement Agreement. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient, then the Defendant shall modify the Engineering Report. The Defendant shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after Defendant's receipt of the Department's comments.

B. The Defendant shall complete implementation of the recommendations provided in the Engineering Report not later than October 31, 2024.

C. The Defendant shall prepare and submit detailed quarterly Progress Reports to the Department describing the Defendant's progress towards achieving compliance with the items presented in the Compliance Plan, including the cost of necessary corrective actions. The Defendant shall submit the Progress Reports so that they are received by the Department no later than one hundred eighty days after entry of this Settlement Agreement and continuing every ninety days thereafter that the Defendant's performance obligations under this Settlement Agreement remain incomplete. In addition, no later than fourteen days following each due date herein, the Defendant shall submit to the Department a written notice of noncompliance, if applicable. Notices of noncompliance shall state the cause(s) of noncompliance, the corrective action

taken, and shall describe the Defendant's ability to comply with any remaining requirements of this Settlement Agreement.

D. No later than 120 days after entry of the Order on this Settlement Agreement, the Defendant shall develop a Sanitary Sewer Overflow ("SSO") Response Plan to establish timely and effective methods for responding to notifiable SSOs. The SSO Response Plan shall address each of the following:

1. General Information:

- a. Approximate population of City/Town, if applicable;
- b. Approximate number of customers served by the Defendant;
- c. Identification of any sub-basins designated by the Defendant, if applicable;
- d. Identification of estimated linear feet of sanitary sewers;
- e. Number of Pump/Lift Stations in the collection system;

2. Responsibility Information:

- a. The title(s) and contact information of key position(s) who will coordinate the SSO response, including information for a backup coordinator in the event that the primary SSO coordinator is unavailable. The SSO coordinator is the person responsible for assessing the SSO and initiating a series of response actions based on the type, severity, and destination of the SSO, except for routine SSOs for which the coordinator may pre-approve written procedures. Routine SSOs are those for which the corrective action procedures are generally consistent.
- b. The title(s), and contact information of key position(s) who will respond to SSOs, including information for backup responder(s) in the event the primary responder(s) are unavailable (i.e., position(s) who provide notification to the Department, the public, the county health department, and other affected entities such as public water systems; position(s) responsible for organizing crews for response; position(s) responsible for addressing public inquiries).

3. SSO and Surface Water Assessment:

- a. Identification of locations within the collection system at which an SSO is likely to occur (e.g., based upon historical SSOs, lift stations where electricity may be lost, etc.).
- b. A map of the general collection system area, including identification of surface waterbodies and the location(s) of public drinking water source(s). Mapping of all collection system piping, pump stations, etc. is not required; however, if this information is already available, it should be included.
- c. Identification of surface waterbodies within the collection system area which are classified as Swimming according to ADEM Admin. Code chap. 335-6-11. References available to assist in this requirement include:
<http://www.adem.state.al.us/alEnviroRegLaws/files/Division6Vol1.pdf>
and http://gis.adem.alabama.gov/ADEM_Dash/use_class/index.html.
- d. Identification of surface waterbodies within the collection system area which are not classified as Swimming as indicated in paragraph D.3.c above, but are known locally as areas where swimming occurs or as areas that are heavily recreated.

4. Public Reporting of SSOs:

- a. Contact information for the public to report an SSO to the Defendant, during both normal and outside of normal business hours (e.g., telephone number, website, email address, etc.).
- b. Information requested from the person reporting an SSO to assist the Defendant in identifying the SSO (e.g., date, time, location, contact information).
- c. Procedures for communication of the SSO report to the appropriate positions for follow-up investigation and response, if necessary.

5. Procedures to immediately notify the Department, the county health department, and other affected entities (such as public water systems) upon becoming aware of notifiable SSOs.

6. Public Notification Methods for SSOs:

- a. A listing of methods that are feasible, as determined by the Defendant, for public notifications (e.g., flyers distributed to nearby

residents; signs posted at the location of the SSO, where the SSO enters a water of the state, and/or at a central public location; signs posted at fishing piers, boat launches, parks, swimming waterbodies, etc.; website and/or social media notifications; local print or radio and broadcast media notifications; “opt in” email, text message, or automated phone message notifications)

(1) If signage is a feasible method for public notification, procedures for use and removal of signage (e.g., availability and maintenance of signs, appropriate duration of postings)

- b. Minimum information to be included in public notification (e.g., identification that an SSO has occurred, date, duration if known, estimated volume if known, location of the SSO by street address or other appropriate method, initial destination of the SSO)
 - c. Procedures developed by the Defendant for determining the appropriate public notification method(s) based upon the potential for public exposure to health risks associated with the SSO
7. Standard Procedures shall be developed by the Defendant and shall include, at a minimum:
- a. General SSO Response Procedures (e.g., procedures for dispatching staff to assess/correct an SSO; procedures for routine SSO corrective actions such as those for sewer blockages, overflowing manholes, line breakages, pump station power failure, etc.; procedures for disinfection of affected area, if applicable);
 - b. Procedures for collection and proper disposal of the SSO, if feasible.
 - c. General procedures for coordinating instream water quality monitoring, including, but not limited to, procedures for mobilizing staff, collecting samples, and typical test methods should the Department or the Defendant determine monitoring is appropriate following an SSO. Identification of a contractor who will collect and analyze the sample(s) may be listed in lieu of the procedures.
 - d. References to other documents (such as Standard Operating Procedures for SSO Responses) may be acceptable for this section; however, the referenced document shall be identified and shall be reviewed at a frequency of at least that required by the Administrative Procedures Section.

8. Date of the SSO Response Plan, dates of all modifications and/or reviews, the title and signature of the reviewer(s) for each date and the signature of the responsible official or the appropriate designee.

E. Department Review of the SSO Response Plan:

1. When requested by the Director or his designee, the Defendant shall make the SSO Response Plan available for review by the Department.
2. Upon review, the Director or his designee may notify the Defendant that the SSO Response Plan is deficient and require modification of the Plan.
3. Within thirty days of receipt of notification, or an alternate timeframe as approved by the Department, the Defendant shall modify any SSO Response Plan deficiency identified by the Director or his designee and shall certify to the Department that the modification has been made.

F. SSO Response Plan Administrative Procedures:

1. The Defendant shall maintain a copy of the SSO Response Plan at the permitted facility or an alternate location approved by the Department in writing and shall make it available for inspection by the Department.
2. The Defendant shall make a copy of the SSO Response Plan available to the public upon written request within 30 days of such request. The Defendant may redact information which may present security issues, such as location of public water supplies, identification of specific details of vulnerabilities, employee information, etc.
3. The Defendant shall provide training for any personnel required to implement the SSO Response Plan and shall retain at the facility documentation of such training. This documentation shall be available for inspection by the Department. Training shall be provided for existing personnel prior to the date by which implementation of the SSO Response Plan is required and for new personnel as soon as possible. Should significant revisions be made to the SSO Response Plan, training regarding the revisions shall be conducted as soon as possible.
4. The Defendant shall complete a review and evaluation of the SSO Response Plan at least once every three years. Documentation of the SSO Response Plan review and evaluation shall be signed and dated by the responsible official or the appropriate designee as part of the SSO Response Plan.

G. No later than 180 days after entry of the Order on this Settlement Agreement, the Defendant shall fully implement the SSO Response Plan developed in accordance with Paragraph D of this Settlement Agreement. Defendant shall certify that the SSO Response Plan has been fully implemented in the subsequent quarterly Progress Report submitted to the Department.

H. The Defendant shall fully comply with the Permit limitations for Fecal Coliform and Enterococci immediately upon entry of the Order on this Settlement Agreement.

I. The Defendant shall comply with all other terms, conditions, and limitations of the Permit immediately upon entry of this Settlement Agreement, including proper operation and maintenance of all facilities and systems of treatment and control which are installed or used by the Defendant, the sampling frequency of pollutants, the timely submittal of discharge monitoring reports (“DMRs”), the timely notification to the public and/or county health department of notifiable SSOs, and the timely submittal of complete SSO reports to the Department.

J. The Defendant shall comply with all other terms, conditions, and limitations of the Permit immediately upon entry of the Order on this Settlement Agreement.

K. The Defendant shall submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Defendant is in compliance with all requirements of the Order on this Settlement Agreement. The Defendant shall submit such certification so that it is received by the Department no later than November 30, 2024.

IX. CIVIL PENALTY

Defendant is assessed a civil penalty in the amount of One Hundred Five

Thousand Dollars (\$105,000.00) to be disbursed as follows:

A. Thirty-Five Thousand Dollars (\$35,000.00) to the State Treasury to the credit of the General Fund.

B. Thirty-Five Thousand Dollars (\$35,000.00) to the Attorney General's Office for reasonable costs incurred to recover such civil penalty. This sum shall be deposited to the credit of the operating funds of the Office of Attorney General.

C. The sum of the payments in paragraphs A and B shall be deposited to the credit of the operating funds of the Office of the Attorney General. The Defendant shall submit both payments (paragraphs A and B) by certified check to the address listed below within forty-five (45) days of the entry of this order:

Administrative Services Division
Office of Attorney General
501 Washington Avenue
Montgomery, AL 36130-0152

D. Thirty-Five Thousand Dollars (\$35,000.00) to the Alabama Department of Environmental Management for reasonable expenses incurred in this enforcement action.

E. The Defendant shall submit said payment (paragraph D) by certified check to the address listed below within forty-five (45) day of the entry of this order:

Alabama Department of Environmental Management
Montgomery Office
Attn: Office of General Counsel
1400 Coliseum Boulevard
Montgomery, AL 36110-2400

X. STIPULATED PENALTIES

A. Milestones

The Defendant shall pay to the State of Alabama stipulated penalties for each

day it fails to meet any of the milestone dates established by Sections VIII.A., C., and K. of this Settlement Agreement. The stipulated penalties for failure to meet each milestone date, except for Force Majeure Acts as hereinafter defined or acts which occur beyond the Defendant's control, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$300
31st to 60th day	\$600
After 60 days	\$1,200

B. Stipulated penalties shall automatically begin to accrue on the first day the Defendant fails to meet any of the schedules of performance required by Sections VIII.A., C., and K. of this Settlement Agreement. Payment of stipulated penalties as set forth above shall not abate any other rights or remedies which may be available to the State of Alabama or its agencies by reason of the Defendant's failure to comply with requirements of this Settlement Agreement, and all applicable federal, state or local laws, regulations, NPDES permit(s) and all other applicable permits. Notification to the Defendant by ADEM of the assessment of any stipulated penalty is not required.

C. Stipulated penalties shall be paid by submitting a certified check payable to the State of Alabama and tendered to the Attorney General, 501 Washington Avenue, Montgomery, Alabama 36130-0152. Copies of the certified check and the transmittal letter shall be sent simultaneously to the General Counsel, Alabama Department of Environmental Management, 1400 Coliseum Boulevard, Montgomery, Alabama 36110-2400.

D. In the event a stipulated penalty is not paid when due, the stipulated penalty

shall be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961 (a). Under no circumstances shall the Stipulated Penalties exceed twenty-five thousand dollars (\$25,000).

XI. FORCE MAJEURE

A. “Force Majeure” for the purposes of this Settlement Agreement is defined as an event arising from causes beyond the control of the Defendant or of any entity employed by the Defendant, including its consultants and contractors, which delays or prevents the performance of any obligation under this Settlement Agreement. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure.

B. When circumstances are occurring or have occurred which may delay the completion of any requirement of this Settlement Agreement, whether or not due to a Force Majeure event, the Defendant shall so notify Plaintiffs in writing within fifteen (15) days after the Defendant knew, or should have known, of the delay or anticipated delay. The notice shall describe in detail the basis for the Defendant’s contention that it experienced or anticipates that it will experience a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to so notify the Plaintiffs shall constitute a waiver of any claim of Force Majeure as to the event in question.

C. If the Plaintiffs find that a delay in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period to

compensate for the delay resulting from such event and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section Number XII. shall apply, and the Defendant shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

D. Compliance with a requirement of this Settlement Agreement shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend another compliance date or dates. The Defendant shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. The Defendant may petition for the extension of more than one compliance date in a single request.

XII. RETENTION OF JURISDICTION/DISPUTE RESOLUTION

A. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Settlement Agreement and for the purpose of adjudicating all disputes among the parties that may arise under the provisions of this Settlement Agreement.

B. Submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Settlement Agreement unless the parties agree to such extension in writing or the Court allows the extension upon motion.

XIII. RIGHT OF ENTRY

Without limiting the authority otherwise available to it, the State, ADEM, and its

authorized representatives and contractors shall have authority at all times, upon the presentation of credentials, to enter the premises of the Defendant to:

1. Monitor the program of activities required by this Settlement Agreement.
2. Verify any data or information submitted to the State or ADEM.
3. Obtain samples from the municipal treatment and collection systems.
4. Inspect and evaluate any portions of the Defendant's treatment and

collection systems; and

5. Inspect and review any records required to be kept under the terms and conditions of this Settlement Agreement or any NPDES Permit and the AWPCA. This provision of this Settlement Agreement is in addition to and in no way limits or otherwise affects the State or ADEM's statutory authorities to conduct inspections, to require monitoring and to obtain information from the Defendant as authorized by law.

XIV. NOT A PERMIT/REQUIRED COMPLIANCE WITH OTHER STATUTES/REGULATIONS

A. This Settlement Agreement is not and shall not be construed as a permit, nor a modification of any existing permit, issued pursuant to the Alabama Water Pollution Control Act, nor shall it in any way relieve the Defendant of its obligations to obtain a permit for its wastewater treatment and collection systems or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

B. Nothing herein shall be construed as relieving the Defendant of the duty to comply with the AWPCA, the regulations promulgated thereunder and all applicable permits issued thereunder, or as relieving the Defendant of its duty to comply with State

law and the regulations promulgated thereunder. The State of Alabama reserves the right to seek additional relief should Defendant fail to achieve substantial compliance with the terms and conditions of its permit(s).

XV. NON-WAIVER PROVISIONS

A. The Settlement Agreement in no way affects or relieves the Defendant of any responsibility to comply with any federal, state, or local law or regulation.

B. Nothing contained in this Settlement Agreement shall be construed to prevent or limit the State's rights to obtain penalties or further or additional injunctive relief under the AWPCA or other State statutes or regulations, including, but not limited to, criminal punishment under § 22-22-14 of the AWPCA, for other violations not expressly specified in the complaint.

C. The Parties agree that the Defendant is responsible for achieving and maintaining compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Settlement Agreement shall be no defense to any actions commenced pursuant to said laws, regulations, or permits.

D. This Settlement Agreement does not limit or affect the rights of the Defendant or ADEM or the State against any third parties which are not parties to this Settlement Agreement. The Parties recognize that this Settlement Agreement resolves only matters between the Plaintiffs and the Defendant and that its execution does not preclude the Defendant from asserting any legal or factual position in any action brought against the Defendant by any person or entity not a party to this Settlement Agreement.

E. The Parties reserve any and all legal and equitable remedies available to

enforce the provisions of this Settlement Agreement.

F. This Settlement Agreement shall not limit any authority of ADEM under any applicable statute, including the authority to seek information from the Defendant or to seek access to the property of the Defendant nor shall anything in this Settlement Agreement be construed to limit the authority of the State to undertake any action against any person in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

G. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications, on the part of the Defendant shall not be cause for extension of any required compliance date in this Settlement Agreement.

H. Obligations of the Defendant under the provisions of this Settlement Agreement to perform duties scheduled to occur after the date of entry of this Settlement Agreement, shall be legally enforceable from that date. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations and payment of such stipulated penalties may be demanded by Plaintiffs as provided in this Settlement Agreement.

I. It is the intent of the Parties hereto that the clauses hereof are severable and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

J. The State of Alabama and ADEM reserve the right to elect to file a civil action for statutory penalties or injunctive relief against the Defendant for any violations of the AWCPA by the Defendant discovered after the Date of Entry of this Settlement

Agreement concerning different violations than these set forth herein.

K. This Settlement Agreement was negotiated, mutually drafted, and executed by the Parties in good faith to avoid further litigation and is a settlement of claims which were contested, denied, and disputed. The execution of this Settlement Agreement is not an admission of any fact, liability, or wrongdoing of any kind regarding any of the matters addressed in the Settlement Agreement.

XVI. REVIEW OF SUBMISSIONS

The State agrees to use its best efforts to expeditiously review all documents, plans and other deliverables that the Defendant is required to submit to ADEM pursuant to the terms and conditions of this Settlement Agreement. The State of Alabama agrees to use its best efforts to coordinate with the Defendant to expedite evaluation of permit applications submitted by the Defendant consistent with Alabama law.

XVII. FORM OF NOTICE

A. Unless otherwise specified or agreed to in writing by all parties, all reports, notices, or any other written communications required to be submitted under this Settlement Agreement shall be sent to the respective parties at the following addresses:

Alabama Department of Environmental Management
Chief of Water Division
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

Office of Attorney General
Zack Wilson
501 Washington Avenue
Montgomery, Alabama 36130-0152

B. Notifications to or communications with ADEM or the Alabama Attorney

General's Office shall be deemed submitted on the date they are received. Notifications to or communications with Defendant shall be deemed received ten (10) days after the date they are postmarked.

XVIII. MODIFICATION

This Settlement Agreement contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of this Settlement Agreement shall not be used in any action involving the interpretation or enforcement of this Settlement Agreement. This Settlement Agreement may not be amended or modified except by written order of this Court. Any modification of this Settlement Agreement by the Parties shall be in writing and approved by the Court before it will be deemed effective. However, minor changes which do not significantly alter the remedial action to be conducted by the Defendant may be made by the Parties, provided such changes are agreed upon in writing.

XIX. TERMINATION

A. This Settlement Agreement shall terminate upon the granting of a motion, after each of the following has occurred:

1. The Defendant has achieved compliance with all provisions contained in this Settlement Agreement.
2. The Defendant has paid all penalties and other monetary obligations due hereunder and no penalties or other monetary obligations due hereunder are outstanding or owed to the State.
3. The Defendant has certified compliance pursuant to Paragraphs 1 and 2 above to the Court and all Parties; and

4. Upon receipt of such certification from the Defendant, ADEM shall review to determine if compliance has been achieved and shall then respond in writing. If the State or ADEM disputes the Defendant's compliance, this Settlement Agreement shall remain in effect pending resolution of the dispute by the Parties or the Court.

B. The Defendant may petition the State and ADEM for termination of the obligations of any paragraph of this Settlement Agreement, provided that the Defendant has satisfied each and every term and condition of that paragraph and certified to the State that it has satisfied each and every term and condition of that paragraph.

XX. SIGNATORIES

The Assistant Attorney General on behalf of the State of Alabama, the Associate General Counsel of the Alabama Department of Environmental Management, and the signatories for the Defendant certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such parties to this document.

WE HEREBY CONSENT to the entry of this Settlement Agreement in the *State of Alabama and ADEM v. City of Fairhope, CV-2020-900594.*

**FOR THE PLAINTIFF
THE STATE OF ALABAMA:**

Steve Marshall
Attorney General

/s/ Zackary D. Wilson
Zackary D. Wilson (WIL471)
Assistant Attorney General

/s/ Robert D. Tambling
Robert D. Tambling (TAM001)
Assistant Attorney General

ADDRESS OF COUNSEL:

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501 Washington Street
Montgomery, AL 36130
(334) 242-7300
Email: zack.wilson@alabamaag.gov

**FOR THE PLAINTIFF
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT:**

Steve Marshall
Attorney General

/s/ Carrie Blanton
Carrie Blanton (TOM024)
*Assistant Attorney General and
Associate General Counsel*

ADDRESS OF COUNSEL:

Alabama Department of Environmental Management
Office of General Counsel
P.O. Box 301463
Montgomery, AL 36130-1463
Telephone: (334) 271-7855
Fax: (334) 394-4332
Email: carrie.blanton@adem.alabama.gov

**FOR THE DEFENDANT
THE CITY OF FAIRHOPE:**

/s/ Matthew McDonald
Matthew McDonald (MCD027)
Attorney for the City of Fairhope

ADDRESS OF COUNSEL:

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Mobile, AL 36602
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Email: mmcdonald@joneswalker.com

/s/ Christopher S. Williams
Christopher S. Williams (WIL424)
Attorney for the City of Fairhope

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DONE this 13th day of August, 2021.

/s/ SCOTT P. TAYLOR
CIRCUIT JUDGE